

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MICHAEL J. CATELL,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-05-0089-HE
	)	
CORRECTIONS CORPORATION	)	
OF AMERICA, et al.,	)	
	)	
Defendants.	)	

**ORDER**

Plaintiff Michael J. Catell, a state prisoner, instituted this § 1983 action alleging violations of his constitutional rights. Consistent with 28 U.S.C. §636(b)(1)(B) and (C), the matter was referred for initial proceedings to Magistrate Judge Valerie K. Couch, who has issued a Report and Recommendation, suggesting that a motion to dismiss filed by the defendants be granted because the plaintiff failed to exhaust his administrative remedies, as required by the Prison Litigation Reform Act. 42 U.S.C. § 1997e(a).<sup>1</sup>

The petitioner failed to object to the Report and Recommendation and, accordingly, waived his right to appellate review of the factual and legal issues it addressed. United States v. One Parcel of Real Property, 73 F.3d 1057, 1059-60 (10th Cir. 1996), *cert. denied*, 519 U.S. 909 (1996). *See* 28 U.S.C. § 636(b)(1)(C); LCvR72.1(a). The court also concurs with the Magistrate Judge's analysis that dismissal is appropriate for failure to exhaust.


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<sup>1</sup>*The magistrate judge noted in her Report and Recommendation that the petitioner conceded he had not exhausted the administrative grievance process for the claims asserted in his complaint, but instead urged he should be excused from complying with § 1997e(a). She found his three reasons for noncompliance to lack merit.*

Accordingly, the court adopts Magistrate Judge Couch's Report and Recommendation, **GRANTS** the defendants' motion to dismiss [Doc. #12] and **DISMISSES** the action without prejudice to refiling.

**IT IS SO ORDERED.**

Dated this 23<sup>rd</sup> day of September, 2005.



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JOE HEATON  
UNITED STATES DISTRICT JUDGE